

**2017 CARE CARPET STEWARDSHIP REVISED PLAN**  
**REQUEST FOR APPROVAL**

**To:** Scott Smithline  
Director

**From:** Howard Levenson  
Deputy Director, Materials Management and Local Assistance Division

**Request Date:** April 18, 2017 (revised April 20, 2017)

**Decision Subject:** Consideration of Approval of California Carpet Stewardship Revised Plan

**Action By:** April 21, 2017

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**Summary of Request:**

Staff requests disapproval of the revised February, 2017 *California Carpet Stewardship Plan 2017-2021* (see Attachment 1) submitted by the Carpet America Recovery Effort (CARE), the stewardship organization designated by carpet manufacturers that sell carpet in California to carry out their responsibilities pursuant to the carpet stewardship law (Public Resources Code (PRC) §42970-42983).

In December 2016, CalRecycle disapproved CARE's October 2016 *California Carpet Stewardship Plan 2017-2020* and directed CARE to submit a revised 2017 Plan, within 60 days, that addressed the Findings contained in the December 20, 2016, Request for Approval. Additionally, CalRecycle allowed CARE to continue to operate under the 2016 Carpet Stewardship Plan until a new Plan was approved, but for no more than 120 days. CARE submitted its revised Plan on February 20, 2017. Staff reviewed the revised 2017 Plan and determined that CARE did not adequately address the Findings contained in the December 20, 2016, Request for Approval.

**Options:**

1. Disapprove The Plan.
  - a. Based on CARE's failure to adequately address the findings in the December 2016 Request for Approval as described in staff's analysis, CalRecycle does not believe that the incremental changes in the 2017 Plan will bring continuous meaningful improvement in the recycling rate or other requirements of the statute.
  - b. Direct staff to present a plan for commencing enforcement actions against manufacturers, ~~wholesalers, and retailers~~ as appropriate, for selling carpet in California not subject to an approved Plan in an information item at CalRecycle's May 2017 Monthly Public Meeting.
2. Approve The Plan.
  - c. Approval of the Plan would allow CARE to continue implementation of its program and provide uninterrupted payments to the existing collection, processing, and manufacturing infrastructure developed over the past 5 years.

**Recommendation:**

Staff recommend Option 1, disapproval of the revised 2017 Plan with respect to meeting the statutory requirements of PRC §42970 et seq., for the reasons set forth in the findings below.

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**Action:**

On the basis of the information, analysis, and findings in this Request for Approval, I hereby disapprove the *California Carpet Stewardship Plan 2017-2021*, submitted by CARE dated February 20, 2017, having found it does not conform to the statutory requirements of PRC §42970 et seq. Without any approved Plans, all manufacturers of carpet, selling in California, are currently subject to penalties of \$10,000 per day until such time as they are covered by a Department-approved plan. Similarly, wholesalers and retailers selling carpet, since they are obligated to confirm a manufacturer's compliance via the Department's website, and are subject to penalties for selling carpet from non-compliant manufacturers that they have not already purchased, are subject to penalties of \$10,000 per day until the manufacturers of all the carpet they sell are covered by an approved plan. However, in order to preserve the recycling infrastructure and avoid market disruptions, manufacturers, retailers, and wholesalers in compliance with the prior 2016 Carpet Stewardship Plan may continue to operate for the next 60 days without being subject to fines for selling carpet in California.

I instruct CalRecycle staff to present a draft plan in an information item at the May 2017 Monthly Public Meeting for commencing enforcement actions against manufacturers, ~~wholesalers and retailers~~ as appropriate, for selling carpet in California not subject to an approved plan. I direct staff to present a final enforcement plan at the June 2017 Monthly Public Meeting. CalRecycle's draft enforcement plan will not include:

- Retroactive fines for the sale of carpet;
- Penalties for wholesalers and retailers that purchase and sell carpet in California.

CalRecycle's draft enforcement plan will include:

- More information about how CalRecycle will approach enforcement for manufacturers selling carpet in California if CARE or any manufacturer fails to submit a stewardship plan that complies with state law.

If enforcement actions on retailers and wholesalers becomes necessary at a later date, staff shall develop and present an additional enforcement plan for approval at a Monthly Public Meeting and provide advance notice to retailers and wholesalers prior to taking enforcement actions. Any such future enforcement plan will not include retroactive fines for wholesalers and retailers.

I also instruct staff to hold a workshop for manufacturers and stakeholders to provide information on how to draft and submit a stewardship plan(s) that comply with state law. Staff shall continue to receive any plans submitted by manufacturers or stewardship organizations representing manufacturers, and within 60 days of submission, review the plan, and make a recommendation to the Director on whether it complies with PRC §42972. Subsequent to the Director's determination, staff would then notify the submitter of the Department's decision to approve or not approve the plan.

**Dated:**

  
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Scott Smithline, Director

**Attachments:**

1. *California Carpet Stewardship Plan 2017-2021* (submitted February, 2017)  
<http://www.calrecycle.ca.gov/Carpet/Plans/2017Revised.pdf>  
(Plan now under consideration for approval)



2. CARE's Cover Letter to CalRecycle's Key Findings (Submitted February, 2017)  
<http://www.calrecycle.ca.gov/Carpet/Plans/2017RevResp.pdf>
3. CalRecycle Staff Analysis of CARE's Response to Findings Matrix  
<http://www.calrecycle.ca.gov/Actions/Documents%5c112%5c20172017%5c1885%5cAttachment%203.pdf>
4. Written comments received from stakeholders on the *California Carpet Stewardship Plan 2017-2021* <http://www.calrecycle.ca.gov/Carpet/Plans/Comments/default.htm#Nov2016>
5. California Carpet Stewardship Plan version 3.2.2 and Addenda  
<http://www.calrecycle.ca.gov/carpet/Plans/default.htm>  
(While this plan expired on December 31, 2016, CalRecycle's Director has allowed CARE to continue to operate under it until April 21, 2017.)
6. CalRecycle Request for Approval, December 2016  
<http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1961&aiid=1788>

## BACKGROUND

Assembly Bill 2398 (Chapter 681, Statutes of 2010) established the first mandatory carpet stewardship program in the country, to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to Public Resources Code (PRC) §40051 (see PRC §42970). The Office of Administrative Law approved regulations on January 26, 2012, to add clarity to statute.

AB 2398 mandated an extended producer responsibility (EPR) approach for the end-of-life management of carpet in California. EPR is a strategy to place a shared responsibility for end-of-life product management on the producers, and all entities involved in the product chain, instead of on the general public and local governments, with oversight and enforcement provided by a governmental agency. This approach provides flexibility for manufacturers, based on their expertise in designing products and the systems that bring these products to market, to design systems to capture those products at the end-of-life to meet statutory goals.

Consistent with an EPR approach, AB 2398 states it is the responsibility of carpet manufacturers who sell carpet into California, through their designated stewardship organization CARE (PRC §42972(a)) to design and implement the California Carpet Stewardship Program to achieve "continuous meaningful improvement" (PRC §42975) in landfill diversion and recycling of postconsumer carpet. CARE, and the manufacturers it represents, utilized its statutory flexibility in designing its Program in order to achieve this broad goal. CalRecycle is responsible for approving or disapproving carpet stewardship plans submitted by individual manufacturers or their designated carpet stewardship organization and for evaluating the Program to determine if the requirements mandated by statute, regulation, and the approved plan are fulfilled.

The requirements for CalRecycle's approval or disapproval of carpet stewardship plans are set forth in PRC §42970, 42973 and 42975; and California Code of Regulations (CCR) §18942-18943. The law and regulations require the plan to include specific goals and Program elements to ensure "continuous meaningful improvement in the rates of recycling and diversion of postconsumer carpet" (PRC §42975).

CARE is implementing its *California Carpet Stewardship Plan, version 3.2.2*, which includes three Addenda separately approved in whole or in part by the Director. These documents are collectively referred to as the "prior Plan," which expired December 31, 2016, but which was allowed to continue to operate by CalRecycle's Director (see Attachment 5). The current Plan established a goal of achieving a 16 percent recycled output rate by December 31, 2016.

Pursuant to its responsibilities under AB 2398, CalRecycle reviews CARE's annual reports for compliance with legal and regulatory mandates. CalRecycle found the California Carpet Stewardship Program out of compliance after review of each annual report for 2013, 2014, and 2015 because the Program was not making continuous meaningful improvement. On September 21, 2016, after the Director found the Program noncompliant based on CARE's 2015 annual report, he directed the Waste Evaluation and Enforcement Branch to commence enforcement evaluation.

In March 2017, CalRecycle filed an accusation against CARE for \$3.3 million dollars in penalties for non-compliance in 2013, 2014, and 2015. As set forth in PRC §42970 et seq. the amount of the assessment added to the purchase price of carpet sold in California shall be sufficient to meet, but not exceed, the anticipated cost of carrying out the Plan. Payment of penalties levied against CARE or payment of legal fees to dispute enforcement actions by the Department are not part of the plan and not an allowable use of assessment funds.

### **FINDINGS AND ANALYSIS OF CARE'S REVISED 2017 PLAN**

The revised 2017 Plan describes and continues many of the activities currently employed by CARE's stewardship Program pursuant to its prior Plan (i.e., the Plan that went through 2016 but which the Director allowed CARE to continue operating under for an additional 120 days). These include collection and processing infrastructure development, market development for postconsumer carpet (PCC) materials, financial supports, and education and outreach efforts, among others. Notable changes in the revised 2017 Plan include CARE reverting back to a twelve month incentive guarantee, with the addition of a "safety valve" provision to help ensure fund solvency, and correcting its primary method for measuring progress towards achieving its diversion and recyclability goals from proportion of gross collections to proportion of all discards.

CalRecycle staff find the revised 2017 Plan, taken as a whole, does not ensure continuous meaningful improvement in carpet recycling and diversion in 2017 and beyond. The revised 2017 Plan describes the current subsidy structure and payout methods, but offers no evaluation of the efficacy of these payments, likely impacts on carpet recycling if subsidy levels are changed, or potential effects of offering new payouts to targeted groups. For instance, the Plan does not address the possibility of incentives for installers to recycle rather than dispose of torn-out carpet, subsidies to reduce tip fees at collection sites, payments to underwrite equipment for better identification of resin types, or other ideas to improve the market mechanisms in the Program. CARE did state that utilizing funding to provide discounted drop-off fees at carpet collection sites would likely increase the diversion of carpet from landfill disposal. However, the revised 2017 Plan does not commit to providing discounted drop-off fees as CARE seems to have determined doing so would require a 1 cent per pound increase in the assessment and that implementing the additional incentives without increasing the assessment would hinder the implementation of other incentives.

The following key findings regarding the revised 2017 Plan are the basis for staff's recommendation to disapprove CARE's Plan. In the section below, each overall finding from CalRecycle's December 2016 RFA is presented, followed by highlights supporting each of those findings, CARE's relevant response from its cover letter and revised 2017 Plan, and CalRecycle staff's analysis of CARE's response. See Attachment 6 for the full description of each of the December 2016 findings and Attachment 3 for detailed staff analyses for each of CARE's responses to those findings.

**FINDING 1 (DECEMBER, 2016):** *The Plan does not provide enough information about the effectiveness of financial incentives and other Program elements to evaluate whether the recycled*

*output goals (24 percent by 2020 and 26 percent by 2021) would actually constitute continuous meaningful improvement, nor how the Plan would achieve these goals.*

Specifically, the 2017 Plan does not:

- Analyze the effectiveness and sufficiency of the current or projected assessment, subsidies and incentives, including their relationship to increased recycling and diversion;
- Offer an evaluation of the efficacy of the current subsidy structure and payment methods, likely impacts on carpet recycling if subsidy levels are changed, or potential effects of offering new payouts to targeted groups;
- Address CARE's rationale and assumptions for setting the dollar thresholds at their current levels in today's market;
- Provide details in the budget regarding the various subsidies or explain the underlying assumptions for the projected amounts, such as the estimated tonnage calculations that underlie the single line item, "AB 2398 Subsidy Payouts;"
- Demonstrate CARE's ability to ensure critical financial mechanisms that will have the desired effect of stimulating markets for increased carpet recycling, which is the underpinning of CARE's program design; or
- Include a process for evaluating and improving the baseline formula for estimating carpet disposal in California to resolve the discrepancy between CARE and CalRecycle's disposal estimates.

**Summary of CARE response to Finding 1 (February, 2017):**

The following responses are from CARE's revised 2017 Plan:

- I. "Given the challenges faced in the current markets, the goal of 26% by 2021 represents both aggressive growth and continuous and meaningful improvement." (Page 16)
- II. CARE has developed an economic forecasting model to "run various market scenarios to inform the decision-making process regarding subsidies and other incentives." CARE "plans to review the refined economic model with the California Council on Carpet Recycling in 2017 once a contract is finalized for model maintenance and analytical support. At this time, the model has not been tested" and CARE intends "to develop the model and gain experience in its application to further refine financial decision-making." (Page 53)
- III. "The model, which is now in the initial stages of implementation by CARE, has been reviewed with CalRecycle." (Page 53)
- IV. CARE provided additional detail in its proposed budget in the revised 2017 Plan. (Page 65)
- V. "CARE acknowledged that its formula and approach to discards, which has been in use for the last three years, results in a different disposal estimate than CalRecycle's statewide waste characterization studies. As part of the revised 2017 Plan, CARE commits to facilitating meetings between CalRecycle, CARE, and CalRecycle's contractor that conducted the waste characterization studies, including a statistician, to review all relevant information and come to a reasonable conclusion regarding CARE's accuracy in calculating discards. The goal will be to reach consensus between CalRecycle and CARE regarding the discard formula by the end of 2017." (Page 13)

The following responses are from CARE's Cover Letter:

- VI. "The Stewardship Planning Committee (SPC) took into consideration many ideas for influencing the supply chain, including the idea of installer incentives, payment of drop off site tip fees, etc. It would be impossible to cover all the options discussed over hundreds of hours of meetings, analysis and brainstorming. The fact that they are not explicitly discussed, or proposed does not constitute a basis for rejecting the Plan." (Page 2)
- VII. ".....with regard to discounted drop-off fees, this subsidy would likely increase the diversion of PCC, but it would ultimately hinder CARE's implementation of other incentives. Looking at total collections from 2016 (Q1-Q3), CARE collections represented approximately 3.5% of total collections, resulting in 3 million pounds (1,500 tons). A discounted local tip fee of \$48 per ton

would have cost CARE approximately \$720,000 during 2016 (Q1-Q3). On a full-year basis, and assuming collections will grow further in 2017, implementation of a tip fee payment by CARE would equate to an additional 1 cent per pound assessment. At the current stage of implementation, however, the Plan is focusing program revenue towards new developments to reuse and recycle PCC.” (Page 2)

- VIII. “CARE and its members disagree with CalRecycle that preserving market share is not relevant to CalRecycle’s evaluation of the adequacy of CARE’s 2017 Plan. Public Resources Code § 42972 clearly provides, “the amount of the assessment shall not create an unfair advantage in the marketplace.” Public Resources Code § 42973 establishes that, in preparing the Plan itself, the amount of the assessment cannot create an unfair advantage in the marketplace “for one or more of the companies in the organization.” CalRecycle therefore is required to consider market share via the assessment and Plan implementation, in two contexts: (1) unfair advantages that might arise within the broader flooring market, and (2) unfair advantages that might arise between companies participating under the same stewardship plan. Simply put, the broader market implications of raising the assessment must be taken into consideration.

At current sales of 94 million square yards per year, CARE must add 1.064 cents to the assessment in order to fund each \$1 million in costs for implementing the Plan. CARE is and must continue to be sensitive to the fact that, unlike other products subject to stewardship fees in California such as bottles, paint, mattresses, etc., carpet products have accepted, viable, competitively-priced and readily available alternative floor covering options, including wood, vinyl, ceramic, stone, engineered wood, and rugs. As foreseen by the Legislature, the assessment under AB2398 will influence California consumers’ purchasing choices. If the assessment is allowed to become too high, it will negatively affect carpet sales within the competitive flooring marketplace and cost California jobs. Any future consideration of assessment increases will need careful thought to ensure that the mandate of AB2398 for a fair marketplace is maintained. With this in mind, the assessment proposed by this Plan balances the positive potential effect of greater assessment revenue to meet diversion and recycling goals, with the potential negative disruption of the marketplace.” (Page 2-3)

**CalRecycle analysis of CARE’s response to Finding 1 (April, 2017):**

Taken in its entirety, CARE’s response to CalRecycle’s Finding 1 is inadequate. Fundamentally, CARE failed to provide any analysis of the costs of recycling, the range of market prices/revenues that might reasonably be expected, the difference between that range and the costs of recycling, and the range of assessments that would be needed to address any market differential. Presented below is CalRecycle’s analysis of each element of CARE’s response to Finding 1:

- I. Neither statute nor regulations mandate a specific recycling target for CARE to achieve. CARE has proposed a 26 percent recycling rate by 2021 but not provided the analytical basis to demonstrate that it represents continuous and meaningful improvement over the 16% recycling rate the program should have achieved by the end of 2016.
- II. At the December 2016 meeting, CalRecycle noted the lack of an analysis that laid out expected costs to achieve specified recycling goals, and how that would impact the assessment and incentive payments. CalRecycle stated that without such an analysis, it is not possible to determine what level of assessment is appropriate. CARE has not provided such an analysis in the revised 2017 Plan. CalRecycle acknowledges that CARE’s economic model has not been tested, and therefore, was not utilized in development of the Plan. However, in the absence of an economic analysis, how can CARE determine the sufficiency of the current assessment, subsidies, and incentives, including their relationship to increased recycling and diversion? Additionally, the revised 2017 Plan does not include a transparent process by which CARE will continuously evaluate and adjust the assessment, subsidies, and incentives in a timely manner in order to achieve continuous and meaningful improvement in the Program.



- III. CalRecycle staff note that CARE's contractor simply presented an overview of the economic model; CalRecycle has not reviewed or endorsed the tool.
- IV. CalRecycle finds that CARE has provided sufficient detail in its proposed budget, including a projected breakdown of income and expenses by year starting from 2017 and projected to 2021.
- V. CalRecycle appreciates CARE's commitment to reach a consensus between CalRecycle and CARE regarding the carpet discard formula by the end of 2017, and considers CARE's response sufficient.
- VI. According to CARE, carpet installation is rarely carried out by do-it-yourselfers and instead is predominantly done by carpet installers. Therefore, carpet installers are an important link in carpet diversion and recycling process. However, the Plan does not provide an economic incentive for installers to recycle carpet. Paying incentives to installers may motivate them to deliver the torn-out carpet to a collection facility or a processor rather than landfilling. However, installers need convenient locations to drop off their torn-out carpets as transportation time is an important consideration for installers. In a large and densely populated county like Los Angeles County, the distance between a northern city such as Lancaster and a southern city like Long Beach is approximately 93 miles. With only one CARE drop-off site per county an installer may have to drive a long distance and spend a considerable amount of time to drop off torn-out carpet at a collection location. Combining installer incentives with free or substantially reduced tip fees at conveniently located recycling locations seems like the most comprehensive and promising approach to increase the quantity of carpet collected for recycling. The 2017 Plan does not present a comprehensive strategy for developing a system that is convenient and cost effective for installers to recycle carpet.
- VII. CARE did not provide an analysis to corroborate its assertion that discounted drop-off fees would hinder implementation of other incentives. CARE calculated that offering a \$48 per ton discount on drop-off fees for 1,500 tons of carpet would have cost the program \$720,000 in 2016 (Q1-Q3). CARE did not provide enough detail to thoroughly analyze the cost estimate it provided for a discounted drop-off fee program but stated it was based on collections from 2016 (Q1-Q3). CARE spent approximately \$500,000 to cover storage, hauling, and tipping fees associated with its collection program in 2016 (Q1-Q3). Adding a \$48 per ton discount on drop-off fees would have increased the cost of the collection program by at least \$72,000 (1,500 tons of Carpet multiplied by \$48/ton of Carpet). Staff speculate that administration, oversight, and one-time startup costs may account for the remaining expenses to arrive at the \$720,000 estimate. However, the incremental cost to add discounted drop-off fees to CARE's collection program is much less than \$720,000. Therefore, using CARE's assumptions, the incremental cost of implementing a discounted drop-off fee for 2016 (Q1-Q3) may have required an assessment increase on the order of 0.2-0.3 cents. On a full year basis the incremental cost of adding a discount drop-off fee to CARE's collection program may be far less than a 1 cent per pound increase in the assessment.
- VIII. ~~CalRecycle's interpretation of Public Resources Code § 42972 is that preserving carpet's share of the overall flooring market relative to other flooring types is not a goal of AB 2398. Preserving market share, therefore, is not relevant to CalRecycle's evaluation of the adequacy of CARE's 2017 Plan. In passing AB 2398, the California Legislature understood that carpet costs could increase and considered the possible effects of legislation that affects only one segment of the flooring market; it nevertheless deemed these types of outcomes acceptable. The statutory language quoted by CARE specifies that the assessment is not to create an unfair advantage in the marketplace "for one or more of the companies in the organization." This language says nothing about unfair advantages regarding other types flooring (i.e., companies not part of the organization). Furthermore, CARE can point to no language about maintaining market share in the statute. The Legislature could have provided such language if it meant that to be a limitation in this law but it did not. It certainly was aware of market issues given that it made sure to include specific language about anti-trust laws in PRC 42981. Public Resources Code § 42972 specifies the funding mechanism has to adequately fund the plan. Therefore, CARE must set the~~

assessment so it is adequate to meet the goals established in CARE's Stewardship Plan. Finally, While CARE has asserted that a higher assessment would affect its market share, it has provided no actual analysis of this, just an unsupported conclusion which prevents CalRecycle from evaluating this claim. CARE needs to provide an analysis demonstrating that a higher assessment will adversely impact market share and that the decline in carpet's share of the flooring market share is not a result of other factors. If CARE does reasonably establish that a higher assessment will adversely impact market share then it has the right and responsibility under this producer responsibility law to find other methods to achieve the program goals.

**FINDING 2 (DECEMBER, 2016):** *The 2017 Plan does not discuss how stakeholder input, especially the recommendations of the newly formed California Council on Carpet Recycling, is evaluated.*

Specifically, the Plan does not identify which ideas from the Council on Carpet Recycling were accepted or rejected for inclusion in the Plan, and does not adequately describe what effect the Council's input had on crucial program elements, including subsidy payment levels and collection infrastructure development.

**CARE response to Finding 2 (February, 2017):**

CARE's Cover Letter stated that "there was not sufficient time to review the revised 2017 Plan with the Council or other stakeholders prior to submittal to CalRecycle. However, CARE committed to actively discuss all program changes in the future with the Council. A webinar was held on February 9<sup>th</sup>, 2017 to share changes and to specifically discuss ideas proposed by the Council that have been incorporated into the revised Plan." (Page 3)

Additionally, CARE has stated in the revised 2017 Plan, "The following Council ideas are budgeted for implementation in the current Plan. In many cases several of these ideas are planned or already underway including:

- Hiring of a fulltime CA Program Manager
- Conduct a "How to Increase Reuse" study
- Increase collection sites
- Increase staffing to expand E&O delivery to target audiences
- Increase outreach to installers
- Increase operations and customer support services support
- Build partnerships with other stewardship programs
- Conduct feasibility study to define "reasonably convenient collection"
- Promote SABRC procurement and adoption of EPP policies
- Collaborate with GoBiz, RMDZ, DGS, and CalRecycle to leverage resources, grants and support CA facilities
- Micro-grants to facilitate reuse and collection" (Page 71)

**CalRecycle analysis of CARE's response to Finding 2 (April, 2017):**

CARE has not provided a comprehensive list of ideas from the Council. Therefore, staff is unable to determine how CARE prioritized the Council's ideas and the extent to which substantive ideas from the Council were incorporated into the revised 2017 Plan. For example, CARE did not present any evidence of input from the Council on subsidy payment levels. CARE did not provide the Council an opportunity to provide meaningful input on the revised 2017 Plan prior to its submittal to CalRecycle. Staff acknowledge that the timeline for revising the 2017 Plan in response to the Department's Findings was short. However, staff do not find the compressed timeline an adequate justification for not soliciting meaningful input from the Council on the revised 2017 Plan prior to its submittal. Staff also note that several of the ideas in the revised 2017 Plan that are described as "budgeted for implementation" were in fact previously planned or already in progress under the prior Plan.



**FINDING 3 (DECEMBER, 2016):** *The 2017 Plan does not sufficiently address reasonable consumer access to recycling services in critical population centers in California.*

Specifically, CARE's 2017 Plan still mainly focuses on one site per county. CARE has not proposed a process to identify locations without convenient access, a methodology for prioritizing where to put new collection centers, and a timeline for providing consumers with reasonably convenient access to carpet recycling.

**CARE response to Finding 3 (February, 2017):**

CARE, in its Cover Letter, stated the following:

- I. "CARE recognizes this is a major challenge; however, CARE has worked diligently and will continue its work to make convenient collection available. After a successful rural pilot program, CARE increased staffing specifically to implement an expanded collection program, with a target for adding both rural and urban locations. As the size of our operations became more sophisticated, CARE realized a standard model was not going to work, especially for larger, more complex locations. In addition, each site has varying restrictions of space, labor and dock or ramp access. The development of each collection site requires significant staff resources to modify and individualize contracts, and to address the diverse needs of each site to ensure success." (Page 3)

The following responses are from CARE's revised 2017 Plan:

- II. "In response to challenges faced at various new drop-off locations, especially larger, more complex locations, this Plan allows for the tailoring of contracts and flexibility to work at the pace of the local organization." (Page 33)
- III. In addition to providing a drop-off location in all 58 counties, CARE committed to conducting a convenience study. "One goal of this study will be to identify locations without convenient access and include recommendations for prioritizing where to place new locations. Upon completion of the study, CARE will consider these findings and identify a timeline for implementation, should the study indicate that sufficient sites are not already provided." (Page 34)

**CalRecycle analysis of CARE's response to Finding 3 (April, 2017):**

CalRecycle finds CARE's response inadequate.

- I. CalRecycle recognizes the challenges of establishing collection sites. However, CalRecycle does not regard one collection site per county as representing convenient access. For example, Los Angeles County, with a population of approximately sixteen million people, cannot be compared to a rural county for convenient access based on a goal of one collection site per county. Other CalRecycle programs, such as the Used Oil and Paint programs, have more than one collection site per county. For example, the Used Oil program has 753 collection sites and the Paint program has 71 collection sites in Los Angeles County alone. CalRecycle recognizes that these are different products with different requirements. Nonetheless, one collection site for carpets per county appears totally inadequate, especially for densely populated counties such as Los Angeles.
- II. CARE has not provided a timeline for completing its proposed study of collection convenience to determine if and where additional sites may be needed. Additionally, there appears to be an inconsistency in CARE's commitment to conducting the study. In the Cover Letter (Page 3) CARE states that "...CARE will conduct the convenience study referenced in the Plan...", however, in the revised 2017 Plan (Page 34), CARE states that "...the Plan incorporates the **option** of conducting a study of collection convenience..." Furthermore, CARE has not identified locations without convenient access, and not addressed how it defines convenient access.

**FINDING 4 (DECEMBER, 2016):** *CARE's proposal to reduce subsidy guarantees to six months does not mitigate the uncertainty and high risk in investment for processors and others to establish and grow critical California infrastructure for long-term carpet recycling.*

Specifically, staff find CARE has not presented a compelling case to reduce the length of time it will guarantee subsidy payment amounts, has not consulted the Council that CARE established to vet important Program changes, and has not adequately evaluated the impact of this change on the nascent carpet recycling industry.

**CARE response to Finding 4 (February, 2017):**

CARE, in its Cover Letter stated the following:

"This finding has been resolved, as CARE has reverted back to a twelve-month incentive guarantee, with the addition of a "safety valve" provision to help ensure fund solvency." (Page 4)

CARE in its revised Plan stated:

"All subsidies offered are subject to a 12-month guarantee. In other words, the subsidies will not be reduced or eliminated without providing subsidy recipients with a notice released a minimum of 12 months before a reduction goes into effect. This element of the Plan is designed to reduce risk for investment and provide the ability to plan ahead in terms of cash flow. The guarantee timeline is subject to a safety-valve provision deemed necessary to ensure liquidity of available funds." (Page 39)

"The safety valve concept has been developed to handle an unexpected event that would jeopardize the solvency of the fund, such as a rapid increase in recycled output. In order to preserve the fund reserve, all expenses will be paid as scheduled, unless the Program payouts for a particular quarter exceed the one-quarter reserve (i.e., fund balance drops below the reserve level). In this instance, and as long as the reserve remains above 50% of the calculated reserve level, all subsidies will be paid out as earned for the current quarter. In the subsequent month, payouts will be reduced proportionally to rebuild the reserve according to the reserve formula. In the event the reserve balance would fall below 50% of the target level, subsidies in the current quarter will be distributed proportionally to all contributing parties based on number of pounds managed. This proportional payout formula would go into effect with the next monthly payout and continue to until the reserve is reestablished or other program adjustments are implemented." (Page 40)

**CalRecycle analysis of CARE's response to Finding 4 (April, 2017):**

CalRecycle acknowledges that CARE has proposed to revert back to a twelve month incentive guarantee, with the addition of a "safety valve" provision to help ensure fund solvency. However, CalRecycle is concerned about the impact of "safety valve" on the Carpet Program. CARE in its Revised 2017 Plan (Page 39) stated that "a proration formula for subsidy payouts to ensure fund solvency will be developed on or before October 1, 2017, the next opportunity to modify the subsidies under the Plan. Given the significant level of subsidies currently being offered by the Program, it is believed that these changes will not greatly affect stakeholders' willingness to invest in opportunities presented by the Program. The proration formula will be reviewed with CalRecycle and the Council prior to implementation."

CalRecycle recognizes that a short term cash flow reduction for solvency may be warranted; however, for long term viability of the Program, CARE needs to consider the revenue side of this issue, i.e., an increase in assessment. CalRecycle views the "safety valve" as a temporary stopgap to maintain fund solvency. Activation of the "safety valve" should also trigger a commitment by CARE to consider assessment increases and other measures that would allow recycled output to continue to increase while maintaining fund solvency. CalRecycle is concerned that the "safety valve" may become a cap and that once the cap is reached, CARE will reduce incentives to stay within the cap. If this was to occur, it could be harmful to the long-term success of the Carpet Program.

**FINDING 5 (DECEMBER, 2016):** *In the 2017 Plan, CARE has inappropriately redefined its primary method for measuring progress towards achieving its diversion and recyclability goals (from proportion of all discards to proportion of gross collections).*

Specifically, CARE's 2017 Plan changed the dominator used when calculating diversion and recyclability from *total carpet discards* to *gross carpet collections*. Not all discarded is collected so the change would have resulted in confusing metrics that may have misled stakeholders regarding the success of the program.

**CARE response to Finding 5 (February, 2017):**

CARE, in its Cover Letter stated the following:

"CARE regrets this unintended development. While the "revised" metric was meant to be an addition to look at the efficiency of conversion of gross collected material to recycled output, it was not the intent to replace or redefine the original diversion definition. Refer to page 17 in the revised Plan to find the original definition of diversion incorporated." (Page 4)

**CalRecycle analysis of CARE's response to Finding 5 (April, 2017):**

CalRecycle finds that CARE adequately addressed this Finding in the revised 2017 Plan.

**FINDING 6 (DECEMBER, 2016):** *The 2017 Plan fails to identify or evaluate the education and outreach (E&O) activities most likely to result in increased recycling and diversion.*

Specifically, CARE's 2017 Plan did not include a prioritized plan of action for education and outreach in which individual activities are correlated to actual increases in recycling and diversion.

**CARE response to Finding 6 (February, 2017):**

CARE, in its Cover Letter, stated the following:

"In response to this finding, CARE revised the Plan to include additional outreach audiences, including installers, building owners and managers. The Plan does not provide specific metrics for correlating outreach activities with program goals, such as increasing recycled output. These goals are accurately quantified through CARE's reporting system. CARE's E&O activities are intended to direct information to targeted audiences identified in the Plan and, as required under AB 2398, to encourage the industry changes necessary for meeting program goals. For example, as CARE informs installers about new drop-off site in their area that accept carpet for recycling at a reduced fee, CARE expects that more carpet will be diverted from landfills to that site.

CARE's E&O strategy is designed and identified to support operational program goals. However, it is not accepted marketing practice to directly tie a particular tactic (e.g. brochure or website campaign) toward the improvement of an operational goal, such as increased recycling output." (Page 4-5)

"The Plan budget does not allow for a full statewide public information campaign, nor does this make sense, as carpet purchase is a discrete event with a long time interval before a subsequent purchase. Thus, CARE's strategy is to provide outreach support at places where consumers are most likely to be thinking about carpet: at retailers, drop-off sites and in contacts with installers.

CARE regularly researches the effectiveness of E&O activities, through phone surveys to evaluate the use of outreach tools distributed to retailers (brochures, signs, etc.) and drop-off sites (signs, communication samples, flyers, etc.), and to determine other needs to be filled. For example, CARE has determined that many drop-off sites lack basic marketing skills and resources; therefore, in the coming year we will be

working to provide website and advertising advice and assistance to improve public communication by our drop-off sites.” (Page 5)

Additionally, as part of its outreach to installers, CARE in its revised 2017 Plan stated the following: “Installers are a hard-to-reach group but are key to diverting carpet to be recycled and away from landfill. CARE has entered into an agreement with Certified Flooring Installers’ Robert Varden, an experienced flooring installation instructor, to conduct a series of installer trainings in California in 2017. CARE will provide scholarship support and will support Varden with handouts and a PowerPoint on carpet recycling. CARE will help to promote the trainings while capturing the participants’ information in order to continue to communicate with them afterwards. The goal is to reach 200 installers with these trainings in 2017 and to continue this relationship assuming it proves fruitful.” (Page 58)

**CalRecycle analysis of CARE’s response to Finding 6 (April, 2017):**

CARE disagrees with CalRecycle’s basic premise that there should be a correlation between E&O activities and key performance measures such as recycled output. CARE has stated in its Cover Letter that, “The Plan does not provide specific metrics for correlating outreach activities with program goals, such as increasing recycled output.” (Page 5) CalRecycle acknowledges that CARE has proposed a number of actions in its revised Plan to improve its E&O activities, such as directly engaging installers who hold regional contracts with big box stores (e.g., Lowe’s, Home Depot), outreach to contractors, building associations, builder exchanges, and local government planning and building departments. Furthermore, CalRecycle recognizes that it is challenging to develop and track metrics demonstrating this correlation. However, the fundamental purpose of education and outreach must be to achieve the goals of the program and specifically to increase the recycled output. CARE’s statement contradicts the basic premise of Finding 6 from December 2016 that “...the lack of a prioritized plan of action for education and outreach, in which individual activities are correlated to actual increases in recycling as the Program matures, could inhibit CARE’s ability to achieve continuous and meaningful improvement in carpet recycling.”

**FINDING 7 (DECEMBER, 2016):**      *The 2017 Plan does not sufficiently address increasing the recycled content in carpet itself (as opposed to secondary products), which could significantly boost end markets for PCC material.*

Specifically, the market development efforts contained in CARE’s 2017 Plan focus almost exclusively on secondary, or downcycled products PCC material. The Plan mentions closed-loop, carpet-to-carpet recycling only briefly and neglects a key market development strategy that is within the control of the carpet manufacturers who have designated CARE as their stewardship organization, which is to increase their own use of PCC materials in manufacturing carpet.

**CARE response to Finding 7 (February, 2017):**

CARE, in its Cover Letter, stated the following:

“Mills are independently investing and examining ways to recycle carpet to carpet. In fact, millions of dollars are spent annually on this process. A notable recent example is the Mohawk Air:O brand product launch. This program required several years to go from proposal to final launch. The same technology is under development for a nylon face fiber carpet. Continuing efforts are being employed for tile recycle by Interface, Tandus Centiva, Shaw and fiber recycle by Aquafil. The development of such programs, however, requires 5-10 year cycles costing tens of millions of dollars. CARE discussed this particular strategic element internally and determined that financial incentives to the mills are well beyond the scope of the financial capacity of this Plan.

Additionally, CalRecycle is aware of recent developments at the Ringgold Plant of Shaw Industries. This program was five plus years in development and cost more than \$20 million. Unfortunately, the



technology was not successful at the commercial scale and had to be discontinued. While R&D continues at Shaw, it is a stark reminder of just how challenging the recycle of post-consumer carpet can be. CARE now maintains a matrix of over 60 potential technologies and is constantly looking for new opportunities. Please refer to page 21 under Closed-Loop Recycle in the revised Plan for more information.” (Page 5-6)

CARE in its revised 2017 Plan stated:

“Closed-loop recycle (carpet-to-carpet) is particularly difficult due to the nature of the fiber-spinning operation (requiring extremely pure polymer). This process was practiced on a large scale by Evergreen Augusta via depolymerization (also called depoly). The plant was shut down in 2015 due to mechanical, safety, and economic reasons and will not be restarted. The closure of Evergreen Augusta resulted in a significant reduction in domestic recycling capacity and in the lower recycled output rate in 2015. Depolymerization of nylon 6 (N6) is practiced on a smaller scale by two companies in North America that continue to struggle with both economics and quality issues.

One major carpet manufacturer has just introduced Ari.O carpet. This product is composed of 100% PET so there is no polypropylene backing, no latex adhesive, and no calcium carbonate. The product is completely recyclable and is designed for sustainability. The same basic technology is applicable to nylon face fiber carpet through a thermal separation mechanism. A nylon carpet system is expected to be introduced in the next 1-2 years. Other industry efforts are underway to design for recycle, but due to competitive reasons cannot be disclosed in this Plan.”(Page 21-22)

Lastly, CARE in its revised 2017 Plan stated, “CARE has been scanning the global technology sphere in search of any technical approach that is applicable to carpet. CARE’s list of identified technologies now contains more than 60 options, only a few of which are deemed to be both technically and economically viable and perhaps only one or two are closed-loop technologies. Most options are still in the testing and qualification stage and, if successful, may be two to five years away from entering the market. CARE will continue to support and follow these developments, including encouraging bringing these technologies to California through efforts including grants, consultation, networking with key candidates within the state, and facilitating meetings with GoBiz and RMDZ.” (Page 22)

#### **CalRecycle analysis of CARE’s response to Finding 7 (April, 2017):**

CalRecycle finds that CARE neglected a promising market development opportunity by not expanding the scope of the revised 2017 Plan to include a comprehensive strategy to increase the use of PCC materials in the manufacturing of carpet.

CARE determined that providing financial incentives to mills to manufacture recycled content carpet is beyond the financial capacity of the Plan. However, CARE did acknowledge the potential of closed-loop recycled content carpet to bring stability to the market for PCC materials by committing to support it through grants, consultations, and other efforts. CalRecycle sees merit in expanding the scope of the Plan to include a comprehensive strategy to accelerate the manufacturing of recycled content carpet in order to support the market for PCC materials. The 2017 Plan covers a 5-year time period and it seems reasonable to include in the scope of the Plan approaches such as closed-loop recycling of carpet that are 2-5 years out.

#### **CONSEQUENCES OF PLAN DISAPPROVAL**

The prior Plan ended by its own terms on December 31, 2016. While the proposed 2017-2021 Plan was being reviewed in accordance with the statutory timelines, CARE continued to operate under the provisions of the prior Plan. However, while statute does provide a 60-day review period for a proposed Plan and a 60-day review period for revisions to that Plan if rejected, statute does not provide any

additional review periods (PRC 42973). Thus, with the disapproval of the proposed 2017-2021 Plan, given that the prior Plan has expired, there will be no approved Plan, nor a proposed Plan pending review.

PRC section 42974 provides, in part, that:

... (b) ....., a manufacturer, wholesaler, or retailer that offers a carpet for sale in this state, or who offers a carpet for promotional purposes in this state, is not in compliance with this chapter and is subject to penalties pursuant to Section 42978, if the carpet is not subject to a plan that is submitted by an organization that includes the manufacturer of that carpet, which plan has been approved by the department pursuant to Section 42973. ...

... (d) A wholesaler or retailer that distributes or sells carpet shall monitor the department's Internet Web site to determine if the sale of a manufacturer's carpet is in compliance with the requirements of this chapter. Notwithstanding Section 42978, a wholesaler or retailer otherwise in compliance with this chapter shall be deemed in compliance with this section if, on the date the wholesaler or retailer ordered or purchased carpet, the manufacturer was listed as a compliant manufacturer on the department's Internet Web site.

Without any approved plans, all manufacturers of carpet, selling in California, are currently subject to penalties of \$10,000 per day until such time as they are covered by a Department-approved plan. Similarly, wholesalers and retailers selling carpet, since they are obligated to confirm a manufacturer's compliance via the Department's website, and are subject to penalties for selling carpet from non-compliant manufacturers that they have not already purchased, are subject to penalties of \$10,000 per day until the manufacturers of all the carpet they sell are covered by an approved plan.

Civil penalties for violations may be imposed administratively in an amount of up to \$10,000 per day depending upon factors set forth in PRC 42978 and in Title 14 California Code of Regulations sections 18945 through 18945.3.

### STAKEHOLDER COMMENTS

CalRecycle received seven comment letters from stakeholders regarding the revised 2017 Plan. Two joint letters urged CalRecycle to disapprove the revised 2017 Plan. One stakeholder expressed concern that any disruption in the incentive funds will jeopardize the entire carpet recycling infrastructure. Another stakeholder expressed strong support for CARE's grant program and its effectiveness at creating jobs and encouraging product developers and inventors to utilize PCC materials. The comments are summarized in the table below. Attachment 3 is a webpage link that provides the full text of these letters:

<http://www.calrecycle.ca.gov/Carpet/Plans/Comments/default.htm#Nov2016>

Stakeholder	Comments
Changing Markets Californians Against Waste Global Alliance for Incinerator Alternatives	Expressed concerns that the revised five-year plan provided by CARE for carpet stewardship failed to meet the requirements of AB 2398 and failed to address the concerns raised in the December 20, 2016 Request for Approval. Recommended that CalRecycle reject CARE's stewardship program and start a process that invited a new product stewardship organization to emerge; that CalRecycle follow through on enforcement actions that they have initiated and levied penalties against the primary CARE decision-makers, the mills included in the Sustainable Fund Oversight Committee; that CalRecycle not allow the stewardship program to use diversion as a whole ( including export, transformation, and Waste to Energy) as a means of counting positive performance – rather it should only count reuse, source reduction, and

	<p>recycling and so CalRecycle should require the stewardship program demonstrate a decrease in those activities; and that the consumer fee should be based on the extent to which the product can be reused and recycled.</p> <p>Stated that CalRecycle has failed to carry out the requirements of state law with respect to the solid waste management hierarchy articulated in Pub. Res. Code Section 40051(3)(b) by allowing export, transformation, and Waste-to-Energy to count as diversion.</p> <p>The revised Plan provides no data or compelling support for the planned program of incentives and subsidies having significant positive impact.</p> <p>CalRecycle should find CARE out of compliance again, enforce penalties on the mills that are primary decision-makers, reject CARE as the stewardship organization, and comply with the Integrated Waste Management priorities established in state law.</p>
<p>California Product Stewardship Council and National Stewardship Action Council</p> <p>San Francisco Department of the Environment</p> <p>Zanker Recycling</p> <p>Sonoma County Waste Management Agency</p> <p>Mojave Desert Joint Powers Authority</p>	<p>Urged CalRecycle not to approve CARE's Revised California Carpet Stewardship Plan 2017-2021. Questioned the commitment of the industry to the program and concluded that the program will not work while the CARE board was in control. While the Plan had modest improvements, on whole, it is too little too late and still does not make large enough investments to ensure all California fee payers have access and knowledge of convenient recycling opportunities.</p>
<p>Mojave Desert Joint Powers Authority</p>	<p>Stated the Plan does not present performance goals on the same basis as the subsidies (i.e. weight), there is no direct link between the percentage goals and the subsidies, and the quoted principle provides no measurable insight about that link. The recycling rate impact is unclear without also knowing discard weights. At its last meeting, the California Council on Carpet Recycling identified and prioritized themes. The second priority was to "set the assessment sufficient to fund the program." The Stewardship Planning Committee (SPC) never considered this Council priority, as it does not appear in Plan. It seems that CARE prefers continuing to rely on its SPC/SFOC process to drive the program. That process and its decisions are not transparent.</p>
<p>Planet Recycling</p>	<p>Planet Recycling did not wish to offer any opinion on the revised Plan submitted by CARE, but wanted CARE and CalRecycle to know that if any incentive funds is disrupted, carpet collection by Planet Recycling will stop in San Diego, and the entire carpet recycling infrastructure will be in jeopardy. Planet Recycling hopes if there is a resolution that it will happen quickly, and if not, that there will be an interim solution so that the infrastructure can stay in place and incentives can still be funded.</p>
<p>XT-Green</p>	<p>Requests that CARE increase transparency and stability in the management of the subsidy programs through: working with the California Council on Carpet Recycling and CalRecycle to develop transparent, goal-driven criteria for the development of subsidies; limiting the reductions in subsidies to a maximum annual percentage</p>

	decrease; locking in a minimum 2 cents per pound subsidy for collector/sorters; increasing the California representation on the CARE SPC and SFOC Committees; Requiring the notification of subsidy changes to include the proposed changes; retroactively cancelling the September 2016 notification and October 2017 changes due to the lack of notification of proposed changes; increasing the subsidy guarantee from 1 to 2 years; providing additional subsidies to California facilities to expand the California carpet recycling infrastructure; and exploring an alternative assessment fee structure that increases available funding while not impacting the market share of lower priced carpet material.
Continuous Improvement for Cleantech Companies	Carpet out of Landfill (COOL) is a competing stewardship program with the opinion that carpet mills should not control the collected funds. The carpet industry's primary goal is to manufacture and sell carpet for profit. A stewardship program should represent the California consumers who paid for the program.
SAFEPAH Products	Expressed strong support for CARE's grant program and its effectiveness at creating jobs and encouraging product developers and inventors to utilize PCC materials. Recommended the Department may want to modify the CARE program but not eliminate it.

#### **Comments About What Counts As Diversion:**

In addition to the comments above, the stakeholder letter from Changing Markets, Californian's Against Waste, and the Global Alliance for Incinerator Alternatives included specific comments regarding transformation and similar technologies. The comment letter stated that "CalRecycle has failed to carry out the requirements of state law with respect to the solid waste management hierarchy articulated in Pub. Res. Code Section 40051(3)(b)" by allowing exports, CAAF, Kiln, transformation, and waste to energy (WTE) to count as diversion. The stakeholders requested that, CalRecycle "...require that the stewardship program demonstrate a continuous decrease in transformation, WTE, and landfill."

CARE's Plan includes a recycling and diversion rate goal. CARE's recycling rate does not include CAAF, Kiln, or WTE and is the primary metric CalRecycle uses to assess overall program performance. Diversion rate is another goal in CARE's Plan. It includes CAAF and Kiln, consistent with California Code of Regulations (CCR) §18941, and WTE (i.e., transformation), which is consistent with PRC 42970 which states that "...the purpose of this chapter is to increase the amount of postconsumer carpet that is diverted from landfills and recycled into secondary products or otherwise managed in a manner that is consistent with the state's hierarchy for waste management practices pursuant to Section 40051." CAAF and Kiln are eligible for incentive payments under CARE's Plan. However, the incentive payments for CAAF and Kiln are capped at 15 percent of total incentive payments. WTE is not eligible for incentive payments under CARE's Plan. While CalRecycle believes that the use of transformation and similar technologies should be minimized, PRC 42970 does not allow the Department to preclude CARE from counting transformation as a form of landfill diversion. CalRecycle's reliance on the recycling rate as a primary metric for assessing overall program performance ensures that the program cannot achieve continuous and meaningful improvement without increases in reuse and recycling of postconsumer carpet.

The sections below provide definitions of CAAF, Kiln, WTE and the quantity of carpet that has gone to each over the last 3 years.

#### **Carpet as Alternative Fuel (CAAF):**

CAAF is defined in California Code of Regulations (CCR) §18941 as "fuel that has been produced from source-separated and sorted post-consumer carpet and processed, including (1) extraction of components



for recycling if at all possible and (2) size reduction, shredding, and/or blending with coal fines, etc. CAAF is not a type of recycling, but it is a type of diversion for purposes of this Article.”

Year	Tons of carpet to CAAF	Incentive dollars
2013	68.5	4,110
2014	0	0
2015	0	0

#### **Cement Kiln (Kiln):**

Cement Kiln is defined by CARE in its revised 2017 Plan as cement production facility that may use CAAF as a source of energy and/or as an additive for cement production. Use of carpet in cement kiln is considered diversion.

Year	Tons of carpet to Kiln	Incentive dollars
2013	24	1,440
2014	4650	279,000
2015	3,450	207,000

#### **Waste-to-Energy (WTE):**

WTE is defined by CARE in its revised 2017 Plan as process of recovering thermal energy from solid waste through combustion. WTE is considered diversion.

Year	Tons of carpet to WTE	Incentive dollars
2013	10,150	0
2014	10,650	0
2015	11,450	0

#### **POSSIBLE CHANGES TO STATUTE**

Staff notes the current statute does not provide the elements CalRecycle considers necessary to effectively implement an EPR program (see CalRecycle’s checklists for proposed EPR legislation at: <http://www.calrecycle.ca.gov/EPR/Resources/default.htm#Checklists>).

Building off of the statutory changes identified in the December Request for Approval (Attachment 6), this section contains high-level concepts for improving the carpet stewardship law, based on CalRecycle’s experience overseeing CARE’s program. These concepts may help to address transparency, enforcement, and overall program performance for carpet stewardship programs.

- **Provide authority to intervene:** CalRecycle currently lacks authority to establish program goals or require specific measures if the plan or program is found out of compliance.
- **Provide authority to establish rates and dates process for program goals and plan activities:** CalRecycle currently lacks authority to establish quantifiable rates and dates.
  - Provide authority to obtain data necessary to evaluate the effectiveness of a program mechanism (e.g., to determine if the assessment levels or incentive mechanisms are or will be effective).

- Provide authority to prescribe program implementation mechanisms if goals are not met.
- Provide authority to ensure that the measures and activities included in proposed plans have clearly defined terms and quantifiable baselines, achievement timelines, and metrics to assist CalRecycle's evaluation of whether the primary goals are being met.
- **Require a bridge plan:** Provide mechanisms to minimize disruptions to the recycling infrastructure in the event the stewardship organization ceases program implementation.
  - Provide CalRecycle the authority to require a bridge or "closure/transition" plan from a stewardship organization as a part of Plan submittal in the event the stewardship organization ceases operation.
  - Authorize CalRecycle to receive and/or direct assessments collected and program reserves to sustain the infrastructure until a new program is in effect.
- **Scale penalties to encourage compliance:** Current penalties have not had a deterrent effect to keep the Program in compliance.
  - Penalties would be based on sales or market share and would ramp up for each year of non-compliance.
  - Specify in statute that assessment funds may not be used to pay penalties and fund legal challenges to enforcement actions.